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JAN 28 1997

January 28, 1997

Mr. William Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Reply Comments of Third Coast Broadcasting, Inc. in MM Docket No. 87-268

Dear Mr. Caton:

For Third Coast Broadcasting, Inc., we are filing the original and four copies of its Reply Comments in MM Docket No. 87-268. These Reply Comments were electronically transmitted to the Commission on Friday January 24, 1997, and these paper copies are being filed as "back-up" for the electronically transmitted copy.

If there is any question concerning this matter, please contact the undersigned.

Sincerely yours,

Scott C. Cinnamon

cc: Third Coast Broadcasting, Inc.

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JAN 28 1997

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service	)))))	FCC 96-207 MM Docket 87-268

REPLY COMMENTS TO SIXTH FURTHER NOTICE OF RULEMAKING BY THIRD COAST BROADCASTING, INC.

The following is a reply comment to Sixth Further Notice of Proposed Rulemaking MM Docket 87-268 (FCC 96-207), concerning LPTV issues and comments concerning technical issues which would affect LPTV stations.

1. Introduction.

Third Coast Broadcasting is a communications consulting company which owns KHMV-LP, an LPTV station in Houston TX. Its President, Robert Fisher, also owns KACY-LP, also in Houston. KHMV-LP is a grandfathered LPTV station which operates on an adjacent channel to a more recently built full power TV station, and has applied for a channel change to move and change its facilities. Neither the granted KHMV channel nor the proposed modification is currently on either the FCC or the Broadcast Caucus list.

However, Fisher's station, KACY-LP has also been proposed to be modified to another channel. Both the original KACY-LP channel and the new proposed channel are on the FCC and Broadcast Caucus lists. Without interference regulation relief, no channels could be found which KACY-LP could use as a replacement in the Houston area. The elimination of

KACY-LP would disrupt television service in west Houston on channel 5 in an area that covers approximately 500,000 viewers, and would eliminate the only non-cable music video programming to an urban ethnic audience. In a market with approximately 50% cable penetration, this would be a significant disruption of television service. With this station at risk and the knowledge that thousands of other LPTV stations and translator stations are likely to be displaced or eliminated, Third Coast presents its reply to other Comments received by the Commission.

2. The FCC Should Provide Relief for Affected LPTV Stations.

Although it is recognized that LPTV and Translators are considered "secondary" it appears to Third Coast that the term secondary has been, over the years, stretched, twisted, inflated and expanded to a much greater meaning than it was originally used with when the LPTV service was created in 1982. In reviewing the Final rule of the proceeding that established LPTV (BC Docket 78-253, FCC 82-107 as published in the Federal Register Vol. 47, No.96, May 18, 1982), in paragraph 25, it is clear that commenters did not understand what the Commission meant by "secondary", and accordingly, the FCC explained it:

> *"the Record indicates that not all parties share a common understanding of secondary spectrum priority. Under the Commission's present rules (§ 74.703) and the Notice of Proposed Rulemaking, secondary status means (1) a low power station will not be authorized where there is a possibility of objectionable interference to an existing full service station, under the standards prescribed herein; (2) an authorized low power station that causes objectionable interference to an existing full service station is responsible for eliminating the interference, or the low power station must cease operation; (3) an existing low power station that would cause interference in connection with a proposed increase or modification of facilities of an existing full service station or with a proposed new full service station is responsible for eliminating the interference, or the low power station must cease operation. These are the rules under which low power stations will operate."*

In a footnote, the Commission indicates that LPTVs are free to propose an upgrade by filing a competing application with a potentially displacing full service applicant. This and the availability of alternate channels has always been our parachute to prevent disaster. Third Coast agrees with the CBA that very few LPTVs have been required to go off the air due to displacements. As the HDTV proceeding has progressed, the Commission responded to one of Third Coast's comments that the displacement of LPTVs by HDTV stations would be permitted, because they were TV stations. Now we have the further burden of displacement by the loss of channels 60-69.

This is very clearly not what was, or what could have been envisioned by the FCC or licensees during the past 15 years. If most LPTV licensees knew that the FCC was planning such a drastic displacement scenario, it is doubtful that many would have invested the large sums required. In light of the multichannel uses, the probable wireless cable equivalency, the internet and data services, and the myriad of other differences between DTV and TV, to call this "TV" for purposes of displacing LPTV stations is like declaring a spotted owl to be a duck.

Third Coast prays that the FCC will recognize the proposed scenario as not being "Displacements: Business as Usual" and will recognize that the LPTV industry should be provided extraordinary relief in any displacements or station eliminations required. The combination of the "one-two punch" of the loss of channels 60-69 and the widespread displacement of LPTV stations by the forced relinquishment of their channels to DTV stations would be an economic disaster to the industry and would cause widespread disruption of television service; the LPTV television service.

3. The Commission Should Avoid Displacing LPTV Stations, Where Possible, Using LPTV "Collision Avoidance".

Third Coast has worked closely with the Community Broadcasters Association (CBA) and fully agrees with all of their comments, particularly the comments concerning relaxation of the rules, displacement avoidance and compensation. Third Coast believes that it is very necessary to relax interference rules to provide alternative channels for displaced stations and that the Commission should minimize impact on LPTVs, where possible.

One of these areas is in the channel selection program for DTV channels. The program used to select DTV channels does not incorporate any LPTV "collision avoidance" algorithms which would prevent displacement of LPTV stations where there would be an alternative DTV channel available. In fact, the programs do not consider the presence of LPTV at all. And although the program does not seek out LPTV channels, because the interference analysis methods are similar for LPTV and DTV, the program may actually be attracted to some of the channels that already have LPTV stations on them. Because of this, there are numerous LPTV stations displaced in places like Dublin, Georgia and Gloversville, New York, rural areas where the availability of an alternative DTV channel is likely. In some displacements, the program actually selected the same channel at the same tower site as a licensed LPTV. It is our understanding that the CBA has succeeded in incorporating an LPTV collision avoidance algorithm into the selection program and is creating a sample for the FCC. Whether they use the CBA's routines or other routines, the Commission should incorporate collision avoidance into the channel selection process for DTV.

4. LPTV Should be a Party to All Channel Negotiations.

The Commission should also require LPTVs to be included in the negotiations for local solutions for DTV channel assignments. In this proceeding, LPTVs and translators are the only groups at risk. Although the Commission has proposed the establishment of 10 regional groups to select "local solution" channels for DTV, it has been stated by the Commission that it was not certain whether LPTV would be included in these meetings. Third Coast believes that it is imperative that LPTV be included in any negotiating groups. Otherwise, the only group at risk would be, essentially, only a spectator as its full power competitors dismantle their channels. This would be very unfair.

5. LPTV Stations Forced Off the Air Should be Compensated for their Loss.

The Commission should also establish a compensation requirement to compensate LPTV stations which are forced to another channel or forced off the air. In the channels which are auctioned, this could be from the winning bidder. In DTV channel displacement, this should be from the DTV station which displaces the LPTV. In the event of relocation, the actual costs of the relocation should be paid. In the event the station is forced off the air, the fair market value of the station should be paid. Reimbursement for equipment values should not be used, because the value of a $40,000 transmitter is likely to be $500 when hundreds of them are on the market, due lost channels.

Each LPTV/translator forced off the air should be compensated according to their value, whether it is the $10,000 translator on the remote Utah mountaintop or the million dollar Boston or Chicago LPTV station.

This reimbursement would accomplish two objectives: First it would ensure that the LPTV is forced to another channel or off the air only when necessary (would give an economic disincentive for unnecessary displacement). And second, would minimize the disaster which will occur when the LPTV industry yields their channels to permit the rollout of digital transmissions. The auctions are estimated to bring in $5 billion, we estimate the DTV buildout to be approximately $17 billion. Isn't there enough in this proposal to prevent thousands of small business people from being economically ruined?

6. Conclusion.

In conclusion, the Commission should act to make sure that LPTVs have as many channels available to them for displacement relief as possible, by relaxing the rules, as appropriate. The Commission should incorporate "collision avoidance" algorithms into their channel search program to minimize the displacements. In cases where a forced channel change is required or if the station is forced off the air, the Commission should make rules to provide economic relief for the LPTV station. Finally, even though the Fourth Report and Order stated that the LPTV issues would be reviewed in a separate proceeding, Third Coast believes that no progress toward the final implementation of DTV should continue and no separate LPTV proceeding should be initiated until the LPTV displacement issues are resolved.

Respectfully Submitted,
Dated January 24, 1997
Third Coast Broadcasting, Inc.

By Robert W. Fisher, President